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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,396	03/19/2004	Dan Steinberg	Dan-1003	7349

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EXAMINER	
KAVANAUGH, JOHN T	

ART UNIT	PAPER NUMBER
3728	

DATE MAILED: 01/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/804,396	Applicant(s) STEINBERG, DAN
	Examiner Ted Kavanaugh	Art Unit 3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 December 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) *4,6-9,11,15-18 and 20* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3,5,10,12-14 and 19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *3-19-04*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election of species 2 (figs. 2-3) and subspecies A (fig. 4) in the reply filed on Dec. 27, 2004 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

2. Claims 4,6-9,11,15-18 and 20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on Dec. 27, 2004.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1,5,10 are rejected under 35 U.S.C. 102(b) as being anticipated by US 3987559 (Roberts).

Roberts teaches a shoe having structure as claimed including a sandal sole (6) with granules of crushed rock adhered to the top surface of the sole (see col. 3, lines 57-69). The preamble "an open-toed sandal" doesn't add any further limitation to the claims. Moreover, a "shoe or slipper", col. 1, lines 4, would include an open-toed sandal. The granules will naturally provide a high-traction surface.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 1,5,10,12,14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roberts '559 in view of US 2978817 (Brenner).

This rejection is being applied as a back-up rejection inasmuch as Roberts doesn't teach an open-toed sandal.

Roberts teaches a shoe comprising a sole (6) with granules of crushed rock adhered to the top surface of the sole (see col. 3, lines 57-69) substantially as claimed except for the shoe having at least one strap (i.e. an open-toed sandal). Brenner teaches a sandal or slipper having at least one strap (20). It would have been obvious to one of ordinary skill in the art to provide the shoe of Roberts with the upper comprising a strap (i.e. an open-toed sandal), as taught by Brenner, to incorporate other types of footwear.

7. Claims 1-3,5,10 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 2959875 (Frese, Jr.) in view of US 1796399 (Roodhouse).

Frese, Jr. teaches a shoe having an open-toe 24 (i.e. an open-toed sandal) comprising a sole (sock lining 18) having a high traction surface (pads 26 and 28) bonded to an upper surface to prevent slipping (see col. 2, lines 29-51). Frese lacks the high traction surface being made up of granules. Roodhouse teaches an antislip device

for shoes comprising granules made of particles (4) of abradant bonded with an adhesive (cementitious medium 3). It would have been obvious to provide the sole of Frese with the high traction surface areas being granules, as taught by Roodhouse, to provide continuous traction that inexpensive to produce. Regarding the granules being crushed rock, it would appear Roodhouse also teaches this since he teaches the abradent material can be torpedo sand (see page 1, col. 1, lines 32-33) inasmuch as crushed shells and rocks form sand. Moreover, It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the granules out of crushed rock, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Regarding claim 2, there is a void between the traction areas 26,28, see figure 1, which corresponds to the central portion.

Regarding claim 3, it would appear to be an obvious design choice to provide granules in only the foot ball area 26 of the sole inasmuch it would be cheaper to produce traction in only one location than 2 or 3 locations. The trade-off is there will be less traction provided for the wearer.

Conclusion

8. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including:

-"The reply must present arguments pointing out the *specific* distinctions believed to render the claims, including any newly presented claims, patentable over any applied r ferenc s."

--"A general all gation that the claims define a patentabl inventi n without specifically pointing out how the language of th claims patentably distinguishes them fr m th r ferenc s does not comply with the requir ments f this section."

-Mor ov r, "The prompt development f a clear issu requir s that th r plies of the applicant m et th objections to and rejections of the claims. Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06" MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see **http://pair-direct.uspto.gov**. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Other useful information can be obtained at the PTO Home Page at www.uspto.gov.

In order to avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly into the Center at *(703) 872-9306* **(FORMAL FAXES ONLY)**. Please identify Examiner Ted Kavanaugh of Art Unit 3728 at the top of your cover sheet.

Any inquiry concerning the MERITS of this examination from the examiner should be directed to Ted Kavanaugh whose telephone number is (571) 272-4556. The examiner can normally be reached from 6AM - 4PM.

Ted Kavanaugh
Primary Examiner
Art Unit 3728

TK
January 11, 2005